

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 1, 2016, at 1:30 p.m.

1. [16-25441](#)-E-13 **AVELINO SANTOS** **MOTION FOR RELIEF FROM**
APN-1 **Chad Johnson** **AUTOMATIC STAY**
 9-26-16 [\[27\]](#)

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the November 1, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Non-filing Co-Debtor, Chapter 13 Trustee, and Office of the United States Trustee on September 26, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion for Relief From the Automatic Stay is granted.</p>

Avelino Santos ("Debtor") commenced this bankruptcy case on August 17, 2016. Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Volkswagen GTI, VIN ending in 2509 ("Vehicle"). The moving party has provided the Declaration of Marquita Braswell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Dckt. 29.

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The Marquita Braswell Declaration provides testimony that Debtor has not made one (1) post-petition payment, with a total of \$493.49 in post-petition payments past due. The Declaration also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$879.49.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$19,999.31, as stated in the Marquita Braswell Declaration. Schedules B and D list the value of the Vehicle at \$0.00. Debtor declares on Schedule B that he “is just a co-signer” on the loan. Dckt. 1. Debtor does not claim any interest in the vehicle for Debtor or the bankruptcy estate.

Movant has provided a copy of the NADA Valuation Report for the Vehicle, which asserts that the retail value of the vehicle is \$18,850.00. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

TRUSTEE’S RESPONSE

David Cusick, Chapter 13 Trustee, filed a response to Movant’s motion on October 18, 2016. Dckt. 48. The Trustee asserts that Debtor’s plan is not yet confirmed, Debtor is current under the proposed plan, and Movant is included in Class 4 to be paid directly by Debtor’s daughter.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass’n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375–76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable non-bankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not stated sufficient (or any identified) grounds for waiving the fourteen-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is denied. Before this court sets aside the fourteen-day stay of enforcement imposed by the United States Supreme Court in enacting

Rule Federal Rule of Bankruptcy Procedure 4001(a)(3), a movant must state grounds sufficient to establish cause for such relief. Movant must identify such grounds, and not merely throw the request in the prayer and expect the court to assemble such grounds that counsel and Movant would have stated (subject to the certifications required under Federal Rule of Bankruptcy Procedure 9011) if Movant had taken the time to identify such grounds. Movant provides no “argument” for waiving the fourteen-day stay.

While the court grants the Motion for Relief for this contested matter, in future motions if Movant sticks other requests for relief in the prayer, eschewing the need for stating grounds in the Motion and identifying for the court what Movant believes to be cause, the court is likely to issue a final ruling denying the motion.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Wells Fargo Bank, N.A.(“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Volkswagen GTI (“Vehicle”), and applicable non-bankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No further or other relief is granted

2. [16-21854](#)-E-13 **KENNETH TABOR**
NLG-1 **Stephen Murphy**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-30-16 [\[74\]](#)**

**SETERUS, INC. VS.
WITHDRAWN BY M.P.**

Final Ruling: No appearance at the November 1, 2016 hearing is required.

Movant having filed a “Voluntary Dismissal of Motion,” which the court interprets to be a Notice of Dismissal allowed by Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**